

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the
Commission's Own Motion into the Rates,
Operations, Practices, Services and
Facilities of Southern California Edison
Company and San Diego Gas and Electric
Company Associated with the San Onofre
Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013
(Filed October 25, 2012)

And Related Matters.

A.13-03-005
A.13-03-013
A.12-03-014
A.13-01-016

**OFFICE OF RATEPAYER ADVOCATES PETITION
FOR MODIFICATION OF D.14-11-040**

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August 11, 2015

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Pursuant to Rule 16.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) files this Petition for Modification (PFM) of Decision (D.) 14-11-040, which approved a settlement agreement between Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E), The Utility Reform Network (TURN), ORA and two other settling parties resolving rate recovery issues related to the premature shutdown of the San Onofre Nuclear Generating Station (SONGS). ORA respectfully requests that the Commission overturn its decision adopting the settlement and reopen the SONGS investigation to all for resolution through litigation rather than through settlement.

The Alliance for Nuclear Responsibility (A4NR) filed a PFM on April 27, 2015 and amended it on May 26, 2015. The A4NR PFM was premised on the revelation of significant, pervasive, unlawful and previously undisclosed communications between senior Edison executives and the Commission President Michael Peevey, particularly referencing what has come to be known as the Hotel Bristol notes (Notes)¹. In those Notes, which Edison asserts were transcribed by Edison Executive Vice President of External Relations, Stephen Pickett, as dictated to him by Peevey at the at the Hotel Bristol in Poland, Peevey indicated his suggested outcome for a SONGS settlement.

ORA, along with other parties to the SONGS proceeding, and much of the observing public, were shocked by the revelation of the Hotel Bristol Notes. As a product of that release Edison was compelled by the Administrative Law Judge (ALJ) to provide additional internal e-mails and other communications that involved the period during which parties were engaged in supposedly confidential negotiations regarding the potential settlement of SONGS shut-down issues.

An examination of the other Edison communications demonstrated Edison's disregard for rules governing ex parte communications with decision makers. As a result of those revelations,

¹ Commission Assistant General Counsel Harvey Morris distributed the Notes to the service list on April 10, 2015. As noted in the April 14, 2015 Administrative Law Judges' Ruling, SCE has acknowledged that the Notes were "drafted by then SCE executive Stephen Pickett, with annotations by Commission President Michael Peevey."

A4NR filed a petition for modification of the decision adopting the SONGS settlement, based on contentions that the settlement was achieved through fraud, via collusive communications between Edison and decision makers.

At that time ORA was faced with the difficult decision of whether to join in the A4NR PFM and seek the rescission of the settlement or continue to support the settlement and find an alternative process to recover ill-gotten gains by Edison. For a number of reasons, ORA determined, at that time, that rescinding the settlement would not necessarily result in a better outcome for ratepayers of the myriad issues surrounding SONGS shutdown. Furthermore, ORA did not want to provide Edison with the opportunity to simply relitigate its issues after the disclosure that Edison had tainted the settlement process. This would essentially give Edison a second chance to get a better outcome for itself, a prospect that ORA did not believe that Edison deserved.

ORA was extraordinarily troubled by the revelations of ex parte communication violations and, in fact, filed its own motion to bar any future ex parte communications by any parties for any purpose in the proceeding.² ORA believed then, as it does now, that the appropriate way to address the massive and pervasive violations is to extract sufficient financial concessions (not limited to penalties that would inure to the State of California) that would remove any conceivable benefit Edison might have achieved as a result of the unlawful communications. ORA believes that the additional appropriate amount that should flow from Edison to ratepayers should be at least \$648 million, the difference between the settlement amount and ORA's initial litigation position prior to the state of settlement negotiations.

ORA therefore determined that it would not join the effort to reject the settlement, but rather reluctantly honor its commitment to support the settlement. However, circumstances have since changed and ORA now takes the position that ratepayers and the public generally are better served by allowing ORA, TURN, A4NR and other consumer groups to work towards a litigated outcome for all issues in the SONGS investigation docket. Based on the August 5, 2014 ALJ

² See Motion of the Office of Ratepayer Advocates for an Interim Ban on Communications Between Southern California Edison Company and the California Public Utilities Commission Regarding the San Onofre Nuclear Generating Station Order Instituting Investigation, May 7, 2015.

Amended Ruling,³ it does not appear possible that ORA can achieve the amount of reimbursement it believes would compensate ratepayers for Edison's unlawful activities that undermined the SONGS settlement negotiations.

ORA supports the recommendation by TURN⁴ that if the Commission overturns its decision to accept the SONGS settlement, it should place the Phase 1 proposed decision on the Commission agenda as soon as possible. A Phase 2 proposed decision also can be prepared quickly because the record is already complete. A Phase 3 prehearing conference should then be held to establish a schedule for testimony, hearings, briefing and the issuance of a proposed decision.

Respectfully submitted,

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³ Amended Administrative Law Judge's Ruling Finding Violations of Rule 8.4, Requiring Reporting of Ex Parte Communications, and Ordering Southern California Edison Company to Show Cause Why It Should Not Also Be Found in Violation of Rule 1.1 and Be Subject to Sanctions For All Rule Violations, August 5, 2015.

⁴ Response of The Utility Reform Network to the Amended Petition for Modification of Decision 14-11-040 by the Alliance For Nuclear Responsibility, June 24, 2015.